IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.149 of 1977 &
Cross Objections No.33-CI/1977 and 75/CI/1987
Date of decision:7.5.2007

Gian Singh

…..Appellant

v.

Surjit Kaur and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE H.S.BHALLA

Present: Mr. D.S.Nehra, Sr. Advocate with
Mr. Munish Bhardwaj and Ms.Amandeep Kaur,
Advocates for the appellants.

Mr. RK Chhibbar, Sr. Advocate,
with Mr. Lalit Thakur, Advocate.

Mr. RK Battas, Advocate with
Mr. Raman Mohinder , Advocate for respondent Nos. 10 and 11.

Mr.H.S.Sran, Advocate for PSEB.
Mr. AS Grewal, Addl.A.G.Pb.

JUDGMENT:

This appeal arises out of order passed on reference under section 30 of the Land Acquisition Act, 1894 (for short, 'the Act'), on the question of apportionment of compensation.

The State of Punjab acquired land in Village Badungar, Tehsil & District Patiala for a public purpose of construction of

Staff Quarters for the employees of Punjab State Electricity Board. The acquisition was by different notifications. The main acquisition covered by Award No.150 was in pursuance of notification under section 4 of the Act, published on 18.10.1961 which was followed by notification under section 6 of the Act, published on 20.1.1962. Land measuring 85.30 acres was acquired by this notification. The Collector gave his award dated 6.2.1962 determining compensation as well as shares of different claimants. The land owners sought references for enhancement of compensation as well as determination of share. The reference court separately dealt with the issue of determination of market value and the apportionment. As far as determination of market value is concerned, we have disposed of the matter by a separate judgment rendered today in RFA No.1560 of 1985 (**S.Gurdeep Singh Dhillon v. The State of Punjab**) and connected matters.

The Additional District Judge, Patiala vide his order dated 24.5.1976 has decided six references under section 30 of the Act.

Dispute for apportionment arose among the right-holders with regard to their share in the Shamlat land. There were number of right-holders but the present appeal has been filed only by Gian Singh alias Prem Singh son of Joginder Singh. S/Shri R.S.Sarkaria and Ajit Singh Sarkaria have filed Cross Objections

No. X-Obj.33-CI of 1977 (hereinafter referred to as 'the first Objectors), while Gurdeep Singh Dhillon has filed X.Obj.75/CI/1987 (hereinafter referred to as 'the Second Objector').

The issue involved regarding claims of Gian Singh on the one hand and the first Objectors on the other hand, has been discussed by the Reference Court, inter-alia, in paras 54 to 65 and 68. Claim of Second Objector has been discussed by the reference court, inter-alia, in paras 66 and 89 of the impugned order. Apart from the said individual claims, some general principles have been discussed in the impugned order in paras 35, 36, 38 to 41, 44 to 47 and 52.

Claim of the appellant Gian Singh is as under:-

(i)Sale deeds in favour of the first Objectors were sham transactions and could not supersede revenue entries and findings to the contrary in paras 45, 46, 57 to 65 and 68 of the order of the reference court are erroneous.

(ii)Appellant Gian Singh being the sole surviving heir of Joginder Singh was entitled to compensation for the entire share of the family instead of dispute among the heirs being left to be determined by the civil court and finding recorded

by the trial court in paras 54 to 56 was erroneous.

On the other hand, learned counsel for the first Objectors submitted that sale deeds Ex.RSS/7 dated 15.10.1923 and Ex.RSS/5 dated 4.3.1936 were genuine conferring valid title on the purchasers with proportionate share in Shamlat land. Exchange deed dated 30.3.1925 Ex.RSS/4 resulted in more land becoming available to the first objectors. It is further stated that principle of payment of compensation on the basis of possession to the extent of title did not suffer from any error of law. It has been further pointed out that Gian Singh could not claim exclusive right of inheritance to the estate of Joginder Singh and the reference court was, thus, justified in leaving Gian Singh to get his claim as heir determined by moving the civil court, as per observations made in para 55 of the impugned order.

Cross Objector Gurdeep Singh Dhillon has claimed revision in determination of share on account of report of enquiry as a result of which Santokh Singh, Patwari was charge-sheeted for giving incorrect report in administrative proceedings.

We have considered the rival submissions and perused the record, particularly findings recorded by the reference court in paras 35 to 89 of the impugned order.

Before we proceed to deal with the rival submissions,it

will be useful to refer to the relevant observations of the reference court, which are as under:-

> "....So I hold that the compensation should be determined in accordance with the area acquired from a party subject to his share in the Shamlat land. In other words if a person is in possession of the area upto the share in the shamlat land, then he should be awarded compensation for that area. (Para 42).
>
> "44. The next question is with regard to the transfers where the co-sharers have transferred shamlat shares beyond their share in the khewat. There is no difficulty in deciding this point. A co-sharer has only the right to transfer his share in the khewat and in the shamlat land. Beyond that he has no right. All such transfers made beyond their shares are to be ignored. Such transferees who had purchased beyond the share of a co-sharer in the khewat land or in the shamlat land would get no compensation. Their transfers are to be ignored."
>
> "45. Another point for consideration is the revenue entries recorded at various times which are not in accordance with the sale deeds. Whenever any sale has been made a corresponding mutation entry has been recorded in revenue record. Sometimes when the Khewat

land with a share in the Shamlat had been sold the revenue officers had not mutated the share in the Shamlat. Sometimes the share in the Shamlat was not sold but the revenue entries show this fact. The various claimants have produced registered sale deeds showing that in some cases the mutations were not sanctioned according to the averments in the sale deeds. Though the wrong entries have permitted a quite number of years but these appear to be made by mistake by the revenue officers sanctioning the mutations The revenue record is not a document of title. The revenue record is compiled so as to recover revenue from the persons recorded as owner of the land. These records are kept for fiscal purposes and they themselves do not confer any title where none exists in the person whose name is recorded as an owner. So, by itself the presence of the entries in the revenue record does not prove title. On the other hand, the sale deeds are the documents of title. They convey ownership and are entitled to weight qua the revenue entries. Even if we presume that a presumption of correctness is attached to the revenue records, this presumption is not irrebuttable. The revenue entries can be shown to be wrong. The production of the sale deeds clearly go to prove that these entries were wrongly incorporated in the Jamabandi."

"....The total land of Shamlat Patti Nihala in Village Badungar comes to 610 bighas 5 biawas. The Commissioner has taken the total area of the Patti Nihala to be 590 bighas only. The report of the Commissioner is to be seen to this extent that the total area of Patti Nihala comes to 610 bighas 5 biswas and this Shamlat land is to be distributed between the co-sharers of the Khewat Lane. Dividing this area with 371 bighas of the Khewat land the ratable share of 1 bigha of Khewat land comes to Lebigha 12 biswas 16 biswas of shamlat land. This that for every bighas of land owned by a person in Patti Nihala he would get 1 bigha 12 biswas and 16 biswansi of shamlat land in Patti Nihala." (Para 47).

"....This shows that there are other heirs of Joginder Singh and Gian Singh is not the only heir now to inherit the estate of his father. I would like to keep the shares of the father and the sons intact. The claimant would be well advised to get his share determined from the Civil Court. No finding is given because the other heirs are not present before me. This shows that Gian Singh alone is not the legal heir of his father Joginder Singh." (Para 55).

"...In this way Joginder Singh is shown to be the owner of 61 bighas and 10 biswas of land in Jamabandi for the year 1970 and 1971. There is

no other evidence on this file to show that Joginder singh purchased any other land, so the area with him comes to 93 bighas 7 biswa." (Para 56).

"The next question to be determined in this case is the share of Shri Ranjit Singh and Ajit Singh, sons of Sardar Atma Singh. The Commissioner has determined their share as 42 bighas 18 biswas in Patti Nihala. Shri Atma Singh was not a cosharer in the original Khewat of Patti Nihala. He became the owner by purchase from the cosharers or through exchange. His position is that of an alienee. He purchased from Joginder Singh 16 bighas 2 biswas of land vide sale deed Ex.RSS 3 on 16.4.1980 BK. He again purchased the share of shamlat in Patti Nihala with regard to Khasra Nos.339, 340, 343, 472, 507 and 354 measuring 18 bighas 17 biswas. In this way Shri Atma Singh became owner in shamlat Patti Nihala equivalent to the land 34 bighas 18 biswas in the khewat. He further exchanged land in this Patti with Mst.Gauran vide exchange deed Ex.RSS.4. He received 11 bighas 18 biswas of land in exchange of 10 bighas 18 biswas of land in Patti Nihala. In this way he acquired 1 bighas more than what he exchanged with Mst.Gauran. In this way he got share equivalent to 39-19 bighas of khewat land. The share calculated at 1 bighas 12 biswas and 16 biswanis

of shamlat land per bigha of the khewat land comes to 59 bighas in Patti Nihala. Afterwards Atma Singh was 59 bighas in Patti Nihala. Afterwards Shri Atma Singh gifted the shamlat land in Patti Nihala, to his sons Shri Ranjit Singh sarkaria and Shri Ajit Singh Sarkaria. Their share in Patti Nihala comes to 59 bighas. The Commissioner has wrongly determined their share to be 42 bighas and 18 biswas. It is to be corrected. In this way the shares of Sarvshri Ranjit Singh Sarkaria and Ajit Singh Sarkaria comes to 59 bighas in Patti shamlat Nihala. The correction be made. I have alreay discussed the share of Charanjit Singh and Gian Singh while discussing Joginder Singh at Serial No.2 of the list. (Para 68).

"The Collector has sent a reply vide his endorsement No.1937/LB/110 dated 13.5.1975 wherein he has mentioned the amounts which are lying with him for disbursement in Awards Nos.150, 553 and 516. He has not sent any amount for disbursement with regard to Patti Saunth Heri or Patti Bira. So, the determination of the share is not needed at all. However, if the shares are to be determined then the claim of the various claimants are to be seen in the light of the discussion made by me. Shri Karanbir Singh is recorded in possession of Khasra No.6 measuring 12 bighas 14 biswas, 7(4-2_, 8 (39-

> 11), 10(32-8), 21(19-6), 122(1-12), and 124(3-18). This is proved from copy of Khasra Girdawari Ex.K.24 that it was in possession fo Karanbir Singh at the time of the acquisition. Khasra No.123 measuring 8 biswas has also been acquired. It was in possession of Gurdip Singh. The total area acquired is 114 bighas 7 biswas out of Patti Saunt Heri. Out of this area, 113 bighas 19 biswas was from the possession of Karanbir Singh and 8 biswas from the possession of Gurdeep Singh Dhillon. I have determined the shares of Karanbir Singh at 259 bighas 14 biswas. According to the learned counsel for Karanbir Singh, he has already received compensation for an area measuring for 131 bighas 14 biswas. In this way he is entitled to receive compensation for 128 bighas more. So, the area now acquired measuring 113 bighas 19 biswas is within the limits of his entitlement. He is entitled to receive compensation for this area of 113 bighas 19 biswas. Gurdip Singh Dhillon is entitled to receive compensation for 8 biswas. To this extent the reference is answered with regard to Patti Saunt Heri." (Para 89).

In the light of submissions made on behalf of the parties and the findings recorded by the trial court, following questions arise for consideration:-

(i)Whether claim of the first Objectors on the basis of Sale deeds should have been rejected on the ground that the sale deeds were sham transactions as the same were not reflected in the revenue record?

(ii)Whether appellant Gian Singh should have been recognised as sole heir of Joginder Singh and given compensation for entire share of the family instead of being relegated to the remedy of the Civil Court?

(iii)Whether principle of award of compensation on the basis of possession to the extent of title is erroneous?

(iv)Whether Cross Objections of the first Objectors should be accepted?

(v)Whether Cross Objections of the second Objector should be accepted?

We now proceed to discuss and deal with the above questions.

Re:Q.No.(i)

Sale deeds Ex.RSS/7 dated 15.10.1923, Ex.RSS/5 dated 4.3.1936 and Exchange Deed dated 30.3.1925 Ex.RSS/4 have been proved to be genuine and valid and cannot be held to be sham transactions merely because entries were not made in the revenue record. It is

not the case of the appellant that the sale deeds were never executed or were forged. Once execution of sale deeds/exchange deed stands proved, the same cannot be held to be sham transactions merely because entries were not made in the revenue record. The finding recorded by the reference court that the sale deeds and the exchange deed were validly executed is not open to interference.

We affirm the finding recorded by the reference court in paras 45, 46 and 68 of the impugned order.

Re:Q.No.(ii)

Gian Singh appearing as GW1 admitted that his brother Charanjit Singh was a proclaimed offender. He claimed that Joginder Singh disappeared before 1939 and was not heard of. Gian Singh admitted in his evidence that his sisters Charan Kaur and Harbhajan Kaur were survived by their husbands and heirs of Saran Kaur were also alive. Thus, there being several heirs, claim of Gian Singh to be the sole heir could not be recognised.

We affirm the conclusion arrived at by the reference court in paras 55 and 56.

Re:Q.No.(iii)

It has not been disputed that Shamlat land had been

acquired earlier also and no Shamlat land remained. In these circumstances, the reference court was justified in holding that person in possession of Shamlat land to the extent of showing his title, could get compensation. It has not been shown by the learned counsel for the appellant Gian Singh as to how he is aggrieved by this finding when the share of Joginder Singh has been duly established as per revenue record to be 93 bighas 7 biswas, as per finding recorded in para 56 of the impugned order.

In these circumstances, we affirm the finding in para 42 of the impugned order. We also affirm the finding recorded in para 47 of the impugned order that for every bigha of land owned by a person in Patti Nihala, he would get 1 bigha 12 biswas and 16 biswansi of Shamlat land in Patti Nihala.

Re:Q.No.(iv)

No argument has been raised on behalf of the first Objectors that they were entitled to more area than 59 bighas on the basis of sale deeds and exchange deed in their favour.

The Cross objections filed by the first Objectors are, thus, liable to be dismissed.

Re:Q.No.(v):

The second Objector has based his claim only on the

basis of some administrative proceedings which are not part of record. Gurdeep Singh Dhillon has been found to be in possession of 8 biswas while Karanbir Singh was found to be in possession of 259 bighas 14 biswas, out of which he has already received compensation for 113 bighas 14 biswas. He has been held entitled to compensation for 128 bighas of land. The finding recorded by the reference court is based on record.

Thus, the finding recorded in para 89 of the impugned order is liable to be affirmed and Cross Objections filed by the Second Objector are liable to be dismissed.

Accordingly, the appeal as well as Cross Objections are dismissed.

(Adarsh Kumar Goel)
Judge

May 7, 2007 (H.S.Bhalla)
'gs' Judge